

ESTTA Tracking number: **ESTTA388674**

Filing date: **01/17/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mr. Alan Brynjolfsson		
Entity	Individual	Citizenship	UNITED STATES
Address	7027 Candeleda de Avila Tampa, FL 33613 UNITED STATES		

Attorney information	Stacy Matulis Law Office of Stacy Matulis 9806 Gretna Green Drive Tampa, FL 33626 UNITED STATES matulisstacy@gmail.com Phone:813-792-0531
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Registration Subject to Cancellation

Registration No	3251194	Registration date	06/12/2007
Registrant	Light Manufacturing Co 519 SE Main Portland, OR 97214 UNITED STATES		

Goods/Services Subject to Cancellation

Class 011. First Use: 2006/04/01 First Use In Commerce: 2006/04/01 All goods and services in the class are cancelled, namely: Lighting fixtures
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Brynjolfsson Petition To Cancel.pdf (3 pages)(78422 bytes) AMP OFFICE ACTION.pdf (6 pages)(192770 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/sm/
Name	Stacy Matulis
Date	01/17/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration of

Light Manufacturing Co., Rajiam Pursifull,
and Dan Johnson

Cancellation No. _____

Reg. No. 3,251,194

Registered: June 12, 2007

Mark: SUNAMP

_____/

PETITION TO CANCEL PURSUANT TO 37 C.F.R. § 2.111

Alan Brynjolfsson, a Florida resident with an address of 17027 Candeleda de Avila, Tampa FLORIDA 33613, is being and will continue to be damaged by the existence of U.S. Registration No. 3,251,194 for the mark SUNAMP, issued on June 12, 2007 to Light Manufacturing Co, Rajiam Pursifull - US Citizen, Dan Johnson - US Citizen PARTNERSHIP OREGON 519 SE Main Portland OREGON 97214 (“Respondents”), an inactive Oregon corporation and associated individuals, with a mailing address 519 SE Main, Portland, Oregon 97214, and hereby petitions to cancel the SUNAMP registration on the following grounds:

1. Petitioner, Alan Brynjolfsson, is in the business of providing outdoor lighting supplies, including lighting fixtures, through a wholesale distributor business that distributes products throughout the United States.
2. On January 6, 2010, Mr. Brynjolfsson filed an intent to use application to register the mark AMP with the United States Patent and Trademark Office (“PTO”) for the following goods and services: Electric lighting fixtures; Electric lighting fixtures, namely, sconces; LED (light emitting diode) lighting fixtures; LED (light

emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED lighting fixtures for indoor and outdoor lighting applications; Lighting fixtures; Lighting fixtures for use in parking decks and garages; Lighting fixtures for use in parking lots and walkways; Lighting fixtures that integrate natural daylight and fluorescent lighting into the fixture; Lighting fixtures with motion detection; Sconce lighting fixtures. The PTO assigned serial number 77905748 to the AMP application.

3. On March 30, 2010, the PTO issued an Office Action in the AMP application, refusing registration on the basis of likelihood of confusion with the SUNAMP mark, which is the subject of this Petition To Cancel (hereinafter the “Cited Registration”). A copy of the Office Action is attached as Exhibit 1.
4. The Cited Registration issued on June 12, 2007 for the following goods and services: lighting fixtures. The Cited Registration lists the Respondents as the Owner(s) of the Cited Registration.
5. Upon information and belief, Respondents are not presently using the mark that is the subject of the Cited Registration in commerce in connection with any goods, and have therefore abandoned the SUNAMP mark.
6. Mr. Brynjolfsson will be damaged by the Cited Registration because if it is not cancelled, Respondents will own the *prima facie* exclusive right to use the mark SUNAMP in connection with goods that the PTO finds to be related to the goods identified in Mr. Brynjolfsson’s AMP application, and, therefore, the continued

existence of the Cited Registration could prevent Mr. Brynjolfsson from obtaining the registration of the AMP mark

7. Accordingly, Mr. Brynjolfsson requests that this Petition to Cancel be granted, and that the Cited Registration be cancelled.
8. The required fee has been paid with this Petition.

Respectfully submitted,

By: Stacy Matulis
9806 Gretna Green Drive
Tampa, FL 33626
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon Respondents, Light Manufacturing Company and Rajiam Pursifull at the addresses of record, 519 SE Main Portland Oregon 97214, and upon Respondent Dan Johnson, 4330 SE Windsor Ct., Portland, Oregon 97206 by First Class Mail on January 16, 2011.

STACY MATULIS, ESQ.
9806 Gretna Green Drive
Tampa, FL 33626

By: /sm/

Document Description: **Offc Action Outgoing**Mail / Create Date: **30-Mar-2010**[Previous Page](#)[Next Page](#)

You are currently on page 1 of 60



To: Alan Brynjolfsson (alanb@llwcorp.com)

Subject: U.S. TRADEMARK APPLICATION NO. 77905748 - AMP - N/A

Sent: 3/30/2010 11:13:16 AM

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[Attachment - 7](#)
[Attachment - 8](#)
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[Attachment - 52](#)
[Attachment - 53](#)
[Attachment - 54](#)
[Attachment - 55](#)
[Attachment - 56](#)
[Attachment - 57](#)
[Attachment - 58](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/905748

MARK: AMP

77905748

CORRESPONDENT ADDRESS:

ALAN BRYNJOLFSSON
17027 CANDELEDA DE AVILA
TAMPA, FL 33613-5213

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

-

APPLICANT: Alan Brynjolfsson

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

alanb@llwcorp.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 3/30/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must

respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3251194. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

The applicant has applied to register AMP for “Electric lighting fixtures; Electric lighting fixtures, namely, sconces; LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED lighting fixtures for indoor and outdoor lighting applications; Lighting fixtures; Lighting fixtures for use in parking decks and garages; Lighting fixtures for use in parking lots and walkways; Lighting fixtures that integrate natural daylight and fluorescent lighting into the fixture; Lighting fixtures with motion detection; Sconce lighting fixtures.”

The registered mark is SUNAMP for “Lighting fixtures.”

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01.

However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin’s Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

COMPARISON OF MARKS

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

Applicant’s mark is similar to the registered mark in appearance and commercial impression, based on the shared wording, “AMP.” Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant’s and registrant’s mark. *See Crocker Nat’l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff’d sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The applicant has simply deleted the extra term from the registrant’s mark. The mere deletion of wording from

a registered mark may not be sufficient to overcome a likelihood of confusion. *See In re Optica Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Applicant's mark does not create a distinct commercial impression because it contains the same common wording as registrant's mark, and there is no other wording to distinguish it from registrant's mark.

Especially in the present case, where the goods are lighting fixtures, if the goods of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b). Prospective consumers are likely to mistakenly believe that the goods are product lines manufactured by the same company or source.

COMPARISON OF GOODS

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Applicant's goods are related to the registrant's because they are lighting fixtures. Likelihood of confusion is determined on the basis of the goods and/or services as they are identified in the application and registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 1207 n.4, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); TMEP §1207.01(a)(iii).

In this case, the registrant's goods are identified broadly as "lighting fixtures." Therefore, it is presumed that the registration encompasses all goods of the type described, including those in applicant's more specific identification, that they move in all normal channels of trade, and that they are available to all potential customers. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re Optica Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(a)(iii).

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods listed therein, namely lighting fixtures, LED lighting fixtures, HID light fixtures, lighting fixtures for use in parking decks and garages, lighting fixtures with motion detection, and sconce lighting fixtures, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Since the marks are similar and the goods are related, there is a likelihood of confusion as to the source of applicant's goods. Therefore, registration is refused under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

Applicant must respond to the requirement(s) set forth below.

PROCEDURAL REQUIREMENTS

Significance Inquiry

Applicant must explain whether “AMP” has any meaning or significance in the industry in which the goods are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

- (1) Is “AMP” an acronym in the context of applicant’s goods?
- (2) Does “AMP” refer to a unit of measurement as it relates to applicant’s electric lighting fixtures, LED light fixtures, etc.?
- (3) How does applicant use “AMP” in its advertising of the goods?

Failure to respond to this request for information can be grounds for refusing registration. *See In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

Applicant’s Response

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE:

Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. Responding by telephone to authorize an examiner’s amendment will not incur this additional fee.

/Y. I. Lee/
Yat-sye I. Lee
Trademark Examining Attorney
Law Office 107
Phone: 571-272-3897

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at

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